UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,070	10/29/2003	Keith Alan Hankin	50277-2241	8121

42425   7590   11/24/2009
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EXAMINER
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ART UNIT	PAPER NUMBER
2163	

MAIL DATE	DELIVERY MODE
11/24/2009	PAPER

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The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte KEITH ALAN HANKIN

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Appeal 2009-004117
Application 10/697,070
Technology Center 2100

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Decided: November 24, 2009

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Before JAMES D. THOMAS, LANCE LEONARD BARRY, and
CAROLYN D. THOMAS, *Administrative Patent Judges.*

J. THOMAS, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134 from the Examiner's final rejection of claims 1-3, 5-16, and 18-26. Appellant has cancelled claims 4 and 17. (App. Br. 2). We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

INVENTION

A method and apparatus for determining the usage of space in a database is provided. A first set of space usage data that reflects the amount of free space associated with one or more tablespaces of a database is stored at a first database server. A second set of space usage data is retrieved from one or more other database servers. The first set of space usage data and the second set of space usage data are both updated based on changes made to the database by the particular database server storing the space usage data. The first set of space usage data is updated at the first database server with the second set of space usage data. The first database server may evaluate the usage of space in the database based on the updated first set of space usage data.

(Spec. 26, Abst.; Figs. 1, and 2).

REPRESENTATIVE CLAIM

1. A method for determining the usage of space in a database, comprising:
storing, by a first database server, a first set of space usage data that identifies a first amount of free space associated with the database,
wherein the first set of space usage data is updated, by the database server, based on changes made to the database by the first database server;

retrieving, from one or more second database servers, a second
set of space usage data that identifies a second amount of
free space associated with the database,
wherein the second set of space usage data is updated, by the
one or more database servers, based on changes made to
the database by the one or more second database servers;
updating the first set of space usage data with the second set of
space usage data; and
evaluating the usage of space in the database based on the
updated first set of space usage data.

PRIOR ART AND EXAMINER'S REJECTIONS

The Examiner relies on the following references as evidence of
anticipation and unpatentability:

Levine	2003/0177187 A1	Sep. 18, 2003 (filed Feb. 20, 2003)
Chinta	6,879,995 B1	Apr. 12, 2005 (filed on May 1, 2000)

Claims 1-3, 5-11, 13-16, 18-24, and 26 stand rejected under 35
§102(e) as being anticipated by Chinta. This reference is utilized along with
Levine to reject claims 12 and 25 under 35 U.S.C. § 103.

The Examiner has also rejected independent claims 1 and 14 under the
second paragraph of 35 U.S.C. § 112 as expressed at page 3 of the Answer.
On the other hand, this rejection is withdrawn as stated at page 10 of the
Answer. Therefore, this rejection is not before us.

The Examiner has also rejected independent claims 1 and 14 under the
first paragraph of 35 U.S.C. § 112 as failing to comply with the written
description requirement as set forth at pages 3 and 4 of the Answer.

CLAIM GROUPING

Based on Appellant's arguments in the Brief, Appellant argues only certain features of independent claim 1 as representative of the subject matter of independent claims 1 and 14.

ISSUE

Has Appellant shown that the Examiner erred in finding that Chinta anticipates the subject matter of representative independent claim 1 on appeal?

FINDINGS OF FACT

1. Pertinent figures in Chinta appear to be Figures 2A-C, 5, 6, and 23. Chinta's application server message logging system "may also be operable to handle low-storage-space or out-of-storage space conditions" as expressed in the last sentence of the Abstract. The Examiner relies upon teachings at column 39, line 34 through column 40, line 35 (Figure 23) relating to this embodiment of use of Chinta's logging system.

ANALYSIS

At the outset, we note again that the Examiner has withdrawn the rejection of independent claims 1 and 14 under 35 U.S.C. § 112, second paragraph. Therefore, this rejection is not before us.

Although the Examiner sets forth the next stated rejection of independent claims 1 and 14 as being based upon the lack of an adequate written description within the first paragraph of 35 U.S.C. § 112, there are no Examiner responsive arguments in the Answer to this rejection

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addressing Appellant's arguments at pages 11 and 12 of the Brief. These arguments make reference to and rely upon the previous arguments presented in the Brief addressing the rejection under the second paragraph of 35 U.S.C. § 112. Since the Examiner has found that these arguments are persuasive to the Examiner's conclusion to withdraw the rejection under the second paragraph of 35 U.S.C. § 112, and, in the absence of any responsive arguments in the Answer to the rejection under the first paragraph of 35 U.S.C. §112, we reverse this rejection. Appellant's noted arguments collectively taken between pages 5 and 12 of the Brief do reference corresponding disclosed bases for the argued features found not to be present by the Examiner in the Specification as filed. The separate rejection of independent claims 1 and 14 under this first paragraph of 35 U.S.C. § 112 is reversed.

We refer to, rely on and adopt the Examiner's findings and conclusions set forth in the Answer as to the remaining rejection of representative independent claim 1 on appeal under 35 U.S.C. §102 as well as to the separately stated rejection of dependent claims 12 and 25 which are rejected under 35 U.S.C. §103. Pages 4 through 6 of the Answer have set forth a detailed correspondence of the claimed features of representative independent claim 1 on appeal to Chinta. In addition, the Examiner has responsive arguments, directed to the positions set forth in the Brief, beginning at page 10 of the Answer that address each of the major arguments presented by Appellant in this Brief. Taken as a whole, the Answer is persuasive of unpatentability.

Chinta's invention as applied to low-storage-space or out-of-storage space conditions as explained in Finding of Fact 1 and as relied upon by the

Examiner appear to correspond to the functionality of determining the amount of free space in a database characterized as "polling the database" set forth as part of the admitted prior in Paragraph [0007] in the Specification as filed.

Equally significant is the Examiner's view that representative independent claim 1 on appeal does not expressly recite separate storage spaces to which first and second sets of data correspond. Notwithstanding this, the Examiner's reliance upon Chinta's Figure 23 to determine storage space as we noted in Finding of Fact 1 is interpreted to be clearly applicable to the plural application servers 108A, 108B with the common database 110 in Figures 2A-C.

In addressing Appellant's arguments at page 18 of the Brief relating to the rejection of dependent claims 12 and 25 under 35 U.S.C. §103 in light of Chinta and Levine, Appellant does not challenge the combinability of these references within 35 U.S.C. §103 and does not contest what the Examiner relies upon from Levine. As set forth in dependent claims 12 and 25, Levine clearly relates to database environments employing a grid of databases to the extent recited broadly in these claims.

CONCLUSIONS AND DECISION

The Examiner's apparently outstanding rejection of independent claims 1 and 14 under the first paragraph of 35 U.S.C. § 112 is reversed. On the other hand, the Examiner's separate rejection of certain claims, including representative independent claim 1 on appeal, under 35 U.S.C. § 102 is affirmed. Likewise, the separately stated rejection of dependent claims 12 and 25 rejected under 35 U.S.C. §103 is also affirmed. Since rejections

encompassing all claims on appeal, claims 1-3, 5-16, and 18-26, are affirmed, the decision of the Examiner is affirmed. All claims on appeal are unpatentable.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(1)(iv).

<u>AFFIRMED</u>

nhl

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